

1984 WL 249949 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 27, 1984

*1 The Honorable Irene K. Rudnick
District No. 81-Aiken County
Box 544
Aiken, SC 29801

Dear Representative Rudnick:

You have expressed concern over the apparent conflict between Act No. 508, Acts and Joint Resolutions, South Carolina, 1984, adding § 21-7-615 to provide for self-proving wills and codicils. As you point out in your letter, Act 508 is confusing, as it requires only two (2) witnesses for a will to be executed, attested and made self-proved, and it has been the law in South Carolina since 1824 that wills of both realty and personalty are required to have three (3) witnesses (See § 21-7-50, South Carolina Code of Laws, 1976). There is no clear expression of legislative intent to repeal the longstanding practice provided for in § 21-7-50, and it is quite possible that the conflict between § 21-7-50 and Act 508 may have gone unrecognized. In light of the fact that there is no express repeal and the law disfavors repeal by implication, it would be advisable, as a matter of caution, that attorneys or individuals executing wills continue to follow the practice of using three (3) witnesses rather than two (2). The use of an additional witness will not invalidate the new procedure set forth in Act 508, and will assure compliance with § 21-7-50. This cautious approach is recommended until the legislature has an opportunity to speak to the subject again. It is recommended that the legislature make clear its intent on this matter by expressly repealing § 21-7-50, or, in the alternative, making the new procedure for self-proving wills comply with the requirement of three (3) witnesses.

I trust that I have sufficiently addressed your concerns over this matter and that the much needed clarification will be forthcoming in the next legislative session.

Sincerely,

B. J. Willoughby
Assistant Attorney General

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